

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
)	
Request for Review of the Decisions of the)	
Universal Service Administrator by)	
)	
CBE Technologies, LLC)	File Nos. SLD- 582501
East Providence, Rhode Island)	and 456578
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

REQUEST FOR REVIEW

CBE Technologies, LLC ("CBE"), by its representative, hereby requests that the Commission review and reverse the Administrator's Decisions on Appeal in the above-captioned matter¹ and order the Administrator ("USAC") to terminate its collections efforts in connection with FRN Nos. 1616378 and 1323754. CBE requests alternatively that the Commission waive enforcement of its rules, if a waiver will enable the Commission to reach the same result.

I. SUMMARY

None of the facts are in dispute, and there is one simple issue that could have and, we submit, should have put an end to this matter a long time ago. That issue is *whether USAC may demand repayment from a vendor for a portion of the basic maintenance fee that it received under an "unbundled warranty" contract, if it turns out that there was covered equipment that never required service during the funding year*. The answer, we submit, must be "no." Any other answer gives USAC authority to rewrite contracts between applicants and vendors, and neither USAC nor the Commission possesses the legal authority to do that. Because the parties had agreed to an [unbundled] warranty-type of arrangement and not a break-fix one, CBE was entitled to a flat fee for maintenance -- whether nothing ever broke down or every single piece of covered equipment broke down every single day. By requiring equipment to break and a vendor to fix it as a

¹ Exhibit 1, Administrator's Decision on Appeal (Funding Year 2007-2008) dated May 27, 2011 and Administrator's Decision on Appeal (Funding Year 2005-2006) also dated May 27, 2011.

prerequisite to getting paid, which is exactly what USAC is doing here, USAC is trying to turn the parties' warranty agreement into a break-fix one, and that is something that USAC may not do.

II. FACTS AND ARGUMENTS

For a detailed discussion of all of the facts and the reasons why USAC's decision should be reversed, we direct the Commission's attention to CBE's *Letter of Appeal*, including exhibits, which are attached hereto as Exhibits 2 and 3, respectively. Below we will focus on what we believe is the dispositive and thus the most important issue.²

This matter involves an "unbundled warranty," a very common insurance-type contract that requires the school or library customer to pay an up-front, fixed fee for as much or as little maintenance as the covered equipment might require during the contract period. The parties share the risk by agreeing on a flat fee to be paid in advance. Thus the fee remains exactly the same whether a large amount of equipment breaks down completely and must be replaced or operates flawlessly throughout the year. Up until FY 2011, these types of maintenance contracts had always been eligible for E-rate support and routinely funded.³ The funding years in issue here are FY 2005 and FY 2007.

The most important facts are these. USAC is demanding that CBE repay part of the fees that it received from USAC for basic maintenance provided to Lynn Public Schools pursuant to an unbundled, warranty-type, fixed-fee contract. It is making this demand because CBE, in an audit many years after the fact, could not produce documentation to show that some of the covered equipment required and received maintenance during the applicable funding years. USAC is making this demand even though it is common knowledge that this kind of warranty maintenance contract has been eligible every funding year from 1998 through 2010. USAC knows or certainly should know that under the terms of this and every other contract like it, the right of the vendor to

² See, also, Exhibit 4 and 5, USAC's 5/10/11 document request and CBE's representative's response to it.

³ See, generally, Exhibit 2 (Letter of Appeal) at section II, A; See *Schools and Libraries Newsbrief - Unbundled Warranties Update* (January 29, 2010) <http://usac.org/sl/tools/news-briefs/preview.aspx?id=279>; *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future, Sixth Report and Order*, CC Docket 02-6, at paras. 106-107 (2010); and *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future, Order*, CC Docket 02-6, at paras. 2 and 4 (2010) ("Clarification Order").

receive payment does not depend on any piece or pieces of equipment ever breaking down. That is why the Commission refers to those kinds of contracts as “unbundled warranties.” That fact is also what led, in part, to the Commission’s deciding late last year to stop funding equipment repairs under those kinds of contracts going forward.⁴

USAC’s handling of FRN 1323754⁵ illustrates just how indefensible USAC’s position is in this case. The following is from USAC’s Decision on Appeal for this funding request:

On May 10, 2011 you were contacted by the Program Compliance Team, to provide you with opportunity, to provide Maintenance records/logs and troubled tickets documenting that maintenance services were provided on Cisco Catalyst 2950 Switch in the Funding Year 2005-2006, for which USAC is seeking recovery. Your response dated May 24, 2011, states that you have a fixed-price contract with unlimited maintenance for the equipment, which eliminates the need for the of documentation being requested, and additionally you also confirm, that you could not provide USAC with any documentation to show specific instances of maintenance. The fact remains, no documentation has been submitted to indicate basic maintenance for eligible equipment Cisco Catalyst 2950 Switch was performed. Consequently, USAC has not erred in its initial determination, and therefore the appeal is denied.

As the foregoing shows, USAC acknowledged specifically that the parties had a “fixed-price contract with unlimited maintenance for the equipment,” which covered, among many other pieces of equipment, a particular switch that had attracted USAC’s interest. That fact alone should have been determinative, but at the end of the day, it meant absolutely nothing. As USAC put it, “The fact remains, no documentation has been submitted to indicate basic maintenance for eligible equipment Cisco Catalyst 2950 Switch was performed.” (Emphasis added). Therefore, USAC went on to conclude, because there was no proof that this particular switch had ever needed repair and

⁴ *Clarification Order* at para. 2 (“In the *Sixth Report and Order*, the Commission sought to reduce the inefficient use of E-rate funds by clarifying that certain services are ineligible for funding beginning in funding year 2011”) and para. 4 (“In order to avoid the potential waste of E-rate resources, however, the Commission concluded that reimbursements for BMIC will be paid only for actual work performed or for hours of labor actually used. The Commission required applicants and service providers to submit invoices to the Universal Service Administrative Company (USAC) for physical work actually performed, as opposed to invoicing in advance for estimated work that in some circumstances may never be performed.” (Emphasis added.)

⁵ FRN 1616378 involves the same issue but more equipment.

that CBE had fixed it, CBE should not have been paid the full fixed fee for basic maintenance that the parties had agreed upon. USAC never explained why it had decided to completely ignore the fact that parties had a “fixed price” contract or why, in its opinion, that critical fact was irrelevant. USAC did not explain it, we submit, because it could not explain it.

If USAC’s decision is allowed to stand, it will substantially change a well-established program rule, and worse, change it retroactively. The new rule for pre-FY 2011 warranty-type maintenance contracts will be that a vendor must be able to prove that it physically maintained during the funding year every piece of equipment that the parties’ fixed-price contract covered or else the vendor will not be entitled to the full fixed fee that the parties had bargained over and ultimately agreed upon. Among other things, this would completely undermine the actuarial foundations upon which those kinds of contracts were based. It will also be a nightmare to administer. Having just declared last fall that unbundled warranty-type contracts would no longer be eligible for equipment repair (as opposed to technical support) beginning in FY2011, the Commission is well aware that there is a world of difference between the two types of maintenance contracts. USAC has no authority to change one into the other and to demand repayment of E-rate funds as a result. Therefore, USAC’s Decisions on Appeal should be reversed.

III. IF NECESSARY, WAIVER OF THE RULES IS WARRANTED

If the Commission decides that program rules require CBE to return a portion of the fixed fee that it received for promising to maintain and, as necessary, maintaining its customer’s eligible equipment in FY 2005 and 2006, then CBE respectfully requests that the Commission waive them.⁶ There is no evidence and no allegation that CBE did not perform its contractual obligation to repair broken equipment. There is no evidence or allegation of any waste, fraud or abuse. And the parties reasonably and in good faith believed that the contract they had entered into was fully eligible for E-rate support -- regardless of how much maintenance work actually became necessary. Moreover, if no waiver is granted, USAC and program auditors will have to go back at least to FY 2005 and “rewrite” every other applicant’s fixed-fee basic maintenance contract and

⁶ The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

demand repayment from vendors for a portion of the fixed fees that those vendors received for covered equipment that never received service. It is evident, therefore, that waiving the rules in these circumstances is in the public interest and would enable the Commission to reach a fair and equitable result.

Respectfully submitted *on behalf of CBE Technologies, LLC*

/s/ Cathy Cruzan

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June 9, 2011

cc: Jenifer Brickhill
Sales Administration & E-rate Manager
CBE Technologies, LLC
401-330-2804
Jennifer.Brickhill@cbetech.com

EXHIBIT 1

Cathy Cruzan
Funds for Learning, LLC
501 South Coltrane Road, Suite 100
Edmond, OK 73034

Billed Entity Number: 120415
Form 471 Application Number: 582501
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2007-2008

May 27, 2011

Cathy Cruzan
Funds for Learning, LLC
501 South Coltrane Road, Suite 100
Edmond, OK 73034

Re: Applicant Name: LYNN SCHOOL DISTRICT
Billed Entity Number: 120415
Form 471 Application Number: 582501
Funding Request Number(s): 1616378
Your Correspondence Dated: April 19, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2007 Notification of Improperly Disbursed Funds Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1616378
Decision on Appeal: **Denied**
Explanation:

- On April 28, 2011 you were contacted by the Program Compliance Team, to provide you with opportunity, to provide any documentation, that you keep to show that the services for eligible basic maintenance on eligible equipment were delivered to Welcoming Middle School, for which USAC is seeking recovery. Your response submitted on May 6, 2011, states that you have a fixed-price contract with unlimited maintenance for the equipment at the Middle school which eliminates the need for the kind of documentation being requested, and additionally you also confirm, that you could not provide USAC with any documentation to show specific instances of maintenance. The fact remains, no documentation has been submitted to indicate basic maintenance for eligible maintenance was performed on eligible equipment at Welcoming Middle School. Consequently, USAC has not erred in its initial determination, and therefore the appeal is denied.

If your appeal has been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Thomas J. Bourque

Cathy Cruzan
Funds for Learning, LLC
501 South Coltrane Road, Suite 100
Edmond, OK 73034

Billed Entity Number: 120415
Form 471 Application Number: 456578
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

May 27, 2011

Cathy Cruzan
Funds for Learning, LLC
501 South Coltrane Road, Suite 100
Edmond, OK 73034

Re: Applicant Name: LYNN SCHOOL DISTRICT
Billed Entity Number: 120415
Form 471 Application Number: 456578
Funding Request Number(s): 1323754
Your Correspondence Dated: April 19, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Notification of Improperly Disbursed Funds Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1323754
Decision on Appeal: **Denied**
Explanation:

- On May 10, 2011 you were contacted by the Program Compliance Team, to provide you with opportunity, to provide Maintenance records/logs and troubled tickets documenting that maintenance services were provided on Cisco Catalyst 2950 Switch in the Funding Year 2005-2006, for which USAC is seeking recovery. Your response dated May 24, 2011, states that you have a fixed-price contract with unlimited maintenance for the equipment, which eliminates the need for the of documentation being requested, and additionally you also confirm, that you could not provide USAC with any documentation to show specific instances of maintenance. The fact remains, no documentation has been submitted to indicate basic maintenance for eligible equipment Cisco Catalyst 2950 Switch was performed. Consequently, USAC has not erred in its initial determination, and therefore the appeal is denied.

If your appeal has been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Thomas J. Bourque

EXHIBIT 2

April 19, 2011
via e-mail: appeals@sl.universalservice.org

Letter of Appeal
Schools and Libraries Division - Correspondence Unit

LETTER OF APPEAL
of
USAC NOTIFICATION OF IMPROPERLY DISBURSED FUNDS RECOVERY LETTERS
Dated February 25, 2011 and March 2, 2011

Appellant/Service Provider: CBE Technologies, LLC
215 North Brow Street
East Providence, RI 02914

SPIN: 143011377

Decision: Notification of Improperly Disbursed Funds Recovery Letter
Decision Date: February 25, 2011
Funding Year: 2005
Form 471 Application Nos.: 456578
FRN Number: 1323754

Decision: Notification of Improperly Disbursed Funds Recovery Letter
Decision Date: March 2, 2011
Funding Year: 2007
Form 471 Application Nos.: 582501
FRN Number: 1616378

Applicant/School District: Lynn Public Schools
Entity Number: 120415
FCC Registration #: 0013033295

Appeal Contact: CBE has authorized Funds For Learning, LLC to file this appeal on its behalf and to discuss any matter related to it. (See Exhibit 13: LOA). Therefore, if USAC has questions or requires additional information, please contact:

- Cathy Cruzan
ccruzan@fundsforlearning.com
405- 471-0965

Funds For Learning, LLC
501 South Coltrane Road (Suite 100)
Edmond, OK 73034

Service Provider Contact: Jennifer Brickhill
Sales Administration & Erate Manager
jbrickhill@cbetech.com

CBE Technologies, Inc. (“CBE”) hereby appeals the Notices of Improperly Disbursed Funds (“Notices”) of the Schools and Libraries Division of the Universal Services Administrative Company (“USAC”) referenced above. In those Notices, USAC concluded that USAC had disbursed E-rate funding improperly to CBE in connection with FRN 1323754 and 1616378.¹

FRN 1323754

KPMG’s 2009 Audit Finding: “During our site visits at LVTI MW, relative to FRN# 1323754, we noted that a Cisco Catalyst 2950 switch was uninstalled and not in use.”²

USAC’s 2011 COMAD Finding: FRN 1323754 – Cisco Catalyst 2950 (Basic Maintenance) “Switch was not installed at the time of the audit.”³

**Funding Disbursement Recovery Report
for Form 471 Application Number: 456578**

Funding Request Number:	1323754
Contract Number:	ITC16
Services Ordered:	INTERNAL CONNECTIONS MNT
Billing Account Number:	
Funding Commitment:	\$22,400.00
Funds Disbursed to Date:	\$22,400.00
Funds to be Recovered from Service Provider:	\$182.21

Disbursed Funds Recovery Explanation:

Finding 4

During an audit it was determined that funds were improperly disbursed on this funding request for products and/or services that were not delivered. The pre-discount cost allocation for maintenance charges for Cisco Catalyst 2950 (Basic Maintenance) Switch which was not installed was provided by the service provider. The pre-discount allocation is \$18.98/month. ($18.98 \times 12 = \227.76 annual pre-discount amount) Based on the applicants discount of 80 percentage the recovery amount is \$182.21. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities. These rules are violated if the service provider receives payment for services and/or products that it did not deliver to the eligible entity. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it only receives support for services and/or products that it actually provides to its customers. Accordingly, USAC will seek recovery of the \$182.21 of improperly disbursed funds from the service provider.

¹ Attached to this appeal as Exhibit 1 are complete copies of both USAC Notices.

² Exhibit 2, KPMG EF-304.4 finding and School District’s response.

³ Exhibit 3, January 14, 2011 USAC request to CBE for FRN 1323754 cost allocation.

I. FACTS

In April of 2009, while auditing one of the School District's FY 2005 funding requests, KPMG came across an old, unboxed switch stored in a network closet at the School District's network hub site. The switch had been covered by the School District's FY 2005 basic maintenance contract. KPMG leaped immediately to the conclusion that because the switch was stored in that closet uninstalled in 2009, the School District must have been violating program rules. USAC went even further, concluding that the switch must have been uninstalled throughout the 2005 funding year, and, if that was the case, CBE should not have included it in its invoice to USAC for basic maintenance. That, however, was not the case, and the School District explained why not.

The School District made it clear, first to KPMG and to USAC later on, that the Cisco 2950 switch that KPMG found stored in that network closet was not the smoking gun that KPMG and USAC felt compelled for some reason to believe it was. It was simply an old switch. The School District had taken it out of service in 2008 and replaced it with a Cisco 3560 because it needed the more advanced switch for its IP Telephony project.⁴ That kind of upgrade was not unusual. It made perfect sense; there was no reason to question it; and indeed no one from KPMG or USAC ever did question it. The only reason the old Cisco 2950 was still in that closet, the School District explained, first to KPMG and to USAC later on, was because it was listed in inventory at that site and in that closet, and the School District had not yet found another site at which to install it.

In its written response to KPMG⁵, the School District explained:

E-304.4 The Catalyst 2950 at LVTI MW was not purchased from FRN 1323754, it was an existing piece of equipment that was in service at the time of the FRN 1323754 Basic Maintenance contract but has since been replaced by new equipment, but was kept in the MDF to keep our inventory of E-Rate equipment in place. The 2950 is a non-Power-Over-Ethernet switch that was replaced in August 2008 by a Catalyst 3560 POE Cisco switch (CBE Invoice S_INV5001568). I described this to the KPMG auditor during the site visits. The

⁴ See Exhibit 4, invoices including purchase and installation of the new Cisco switch at this location, which the School District shared with KPMG.

⁵ See Exhibit 2, last paragraph.

Basic Maintenance FRN 1323754 in question was for funding year 2005. Your site visit was in April 2009.

In its September 29, 2011 Information Request to the School District, USAC assumed that the School District had never installed the Cisco 2950. We do not know why, but USAC either ignored or missed completely the School District's explanation that the switch had been in service throughout all of FY 2005. The Cisco 2950, USAC observed in that Information Request, "was not installed at the time of the audit"⁶ That was true, but *that did not mean that the switch had never been installed*. Indeed, as the School District had explained before, it had used the Cisco 2950 at that location throughout the 2005 funding year and up until 2008, when it replaced it as part of its IP Telephony project.

Despite the reasonableness of the School District's explanation, the support for it, and the absence of any evidence to the contrary, USAC remained stuck on the notion that the switch had never been installed. It was almost as if no one at USAC had ever even read the School District's explanation. For example, after noting that the switch was found uninstalled at the time of the audit, instead of asking the School District "why," USAC instructed the School District to "please explain the reason for the delay in using the equipment, just assuming that the School District had made the decision to store it there in that closet, unboxed and never used, for years. So the School District explained once again that there had been no delay, that the switch had already been installed, used and, in 2008, replaced."⁷

After the School District explained to USAC that it was mistaken, that there had been no delay, USAC never followed up, either with the School District or CBE. When USAC finally did contact CBE, it was only looking for one thing -- a cost allocation for the FY 2005 maintenance associated with the Cisco 2950 switch.⁸ Curiously, even though CBE had sold the switch to the School District and charged for maintaining it, and even though USAC was about to allege that the switch had never been installed, USAC

⁶ See Exhibit 5, USAC's COMAD-related Information Request at p.1 (FRN 1323754 under Finding 4).

⁷ See Exhibit 6, School District's response to USAC's COMAD-related FRN 1323754 information request.

⁸ See Exhibit 7, CBE's response to USAC's January 14, 2011 cost allocation request.

had no interest in CBE's side of the story.

Indeed, after CBE received the cost allocation request, it had to contact the School District just to find out what the issue actually was. As soon as it did, CBE attempted to establish a dialogue with USAC's representative about it, but to absolutely no avail.⁹ Like the School District, CBE tried to explain that the switch had been installed during FY 2005, but USAC's representative had no interest in anything CBE had to say. "The review has gone through based on your response you provided," USAC's representative explained, cutting off any further discussion. That statement, however, was extremely disingenuous. Yes, the review had gone forward with CBE's response to USAC's cost allocation question, but not with any "response" to the substantive, Cisco 2950 installation issue -- because USAC had never asked for one. Two weeks later on February 25, 2011, USAC demanded that CBE repay USAC for the cost-allocated value of FY 2005 maintenance services on that Cisco 2950, and only because KPMG had found that switch uninstalled in 2009, when it audited the School District.

II. DISCUSSION

USAC's decision to recover funds under this FY 2005 FRN is based on the faulty premise that an old switch, which KPMG found stored in a network closet at the time of the audit, had never been installed. This faulty premise led USAC to conclude that CBE invoiced the School District and USAC for maintenance on a switch that had never been installed. Nothing could be farther from the truth.

USAC's decision is based on a KPMG finding that the auditing firm never should have made in the first place, as KPMG actually had to ignore the facts to make it. The School District explained to KPMG and USAC that the Cisco 2950 was an old switch that had been operational throughout FY 2005, that the installation of an IP telephony network in 2008 necessitated its replacement by a newer, more advanced Cisco switch, and that the old switch was being stored in that particular network closet until the School District could find another use for it because that was where the School District's inventory of networking equipment showed it being located. Rather than complimenting

⁹ See Exhibit 8, email correspondence between CBE and USAC.

the School District on its inventory practices, KPMG and USAC went in a completely different and unexpected direction.

Without explanation and for reasons we still do not understand, USAC decided that since the switch was in storage in 2009, ergo, it must have been that way throughout FY 2005. If the switch had remained uninstalled throughout FY 2005, USAC concluded although much more cryptically, then CBE could not possibly have maintained it during that time period, and, therefore, USAC should not have paid CBE any E-rate funds for maintaining it. But what actually happened, as we have discussed at length already and which the School District explained repeatedly, is that the switch that KPMG found was not new – it was used. It had already been installed, used for years, and replaced. Hence, contrary to KPMG's and USAC's findings, there was no delay in installing it.

Accordingly, we respectfully request that USAC reverse its decision and terminate the repayment process in FRN 1323754. In addition, for the record, it should be noted that neither KPMG nor USAC ever asked CBE about the installation issue, even though it was CBE's conduct in connection with that switch that USAC alleged violated program rules. Deciding that a service provider is liable for the return of federal funds without ever giving that service provider an opportunity to respond to the charges against it unquestionably violates the most fundamental principles of procedural due process.

FRN 1616378

Funding Disbursement Recovery Report for Form 471 Application Number: 502501

Funding Request Number:	1616378
Contract Number:	ITC16
Services Ordered:	INTERNAL CONNECTIONS MNT
Billing Account Number:	
Funding Commitment:	\$17,712.00
Funds Disbursed to Date:	\$17,712.00
Funds to be Recovered from Service Provider:	\$17,712.00

Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that funds were disbursed for products and/or services that were not delivered. Proper documentation (such as copies of maintenance logs and trouble tickets) to indicate eligible maintenance was performed on eligible equipment at the Welcoming Middle School was not provided by the service provider. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities. These rules are violated if the service provider receives payment for services and/or products that it did not deliver to the eligible entity. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it only receives support for services and/or products that it actually provides to its customers. Accordingly, USAC will seek recovery of the \$17,712.00 of improperly disbursed funds from the service provider.

I. FACTS

FRN 1616378 is a FY 2007 funding commitment for basic maintenance service on one Cisco 3750 switch, two Cisco 3560 switches, one Cisco 2851 router, one HP ProLiant DL320 – Firewall/VPN/DHCP server, and all data cabling located at Welcoming Middle School.¹⁰ USAC instructed CBE in a COMAD-related Information Request to “provide documentation showing that the maintenance services were delivered to the Welcoming Middle School (school code 01630330) during FY 2007 (e.g. maintenance records, trouble tickets).”¹¹

In its response, CBE explained to USAC that the company had a fixed-price

¹⁰ See Exhibit 9, page from the School District’s FY 2007 Item 21 Attachment for FRN 1616378.

¹¹ See Exhibit 10, January 27, 2011 Information Request from USAC to CBE.

agreement to provide basic maintenance services to Welcoming Middle School and to every other school in the School District, so it did not keep those kinds of records.¹² It could show, CBE explained, times when CBE personnel were deployed to the School District to provide service, but it could not do so on a site-by-site basis. CBE tried to explain that the parties' contract, by itself, was sufficient to document the provision of service to the middle school, as it required CBE to provide whatever basic maintenance the covered equipment might need throughout the entire term of the contract -- whether that meant fixing something every day or never having to fix anything at all. Under that kind of basic maintenance contract, even if nothing broke, the company would still be legally entitled to the entire upfront fee.

It is important to point out, though, that even if no equipment at the middle school needed repair that year, CBE still had to provide and did provide both periodic preventive maintenance and basic technical support for that equipment, either directly or indirectly via Cisco SmartNet maintenance service. As CBE also explained, because the parties' contract included SmartNet service, Cisco would have had to have provided software upgrades, patches, hotfixes, technical support and replacement parts, as necessary, for all of the covered Cisco equipment located at Welcoming Middle School that year.

USAC's representative flatly rejected CBE's response. She said simply, "I need to see proof as outlined in the letter trouble tickets, service logs etc. [sic]"¹³ If CBE could have provided that kind of documentation, it would have when USAC asked for it the first time. That is why CBE, in its response, had been careful to explain that the parties had a fixed-price maintenance contract – i.e., an agreement to pay a fixed amount, in advance, for repair work that might or might not be needed during the funding year. In FY 2007, that kind of basic maintenance contract was extremely common and fully eligible, which should have made the entire matter moot. It was obvious though that the matter was not going to end quickly unless and until CBE could show USAC trouble tickets or service logs for Welcoming Middle School.

Shortly thereafter, USAC notified CBE that it had decided to seek recovery of the

¹² See Exhibit 11, CBE's response, inserted at the bottom of page 1 of USAC's February 7, 2011 request.

¹³ See Exhibit 12, e-mail dated February 11, 2011 from Karen Hulmes to Jennifer Brickhill.

\$17,712 that USAC had paid to CBE for maintaining equipment at Welcoming Middle School during the 2007 funding year. According to USAC, “Proper documentation (such as copies of maintenance logs and trouble tickets) to indicate eligible maintenance was performed on eligible equipment at the Welcoming Middle School was not provided by the service provider.”¹⁴ Without that evidence, USAC concluded, CBE could not prove that it had provided any eligible maintenance service at Welcoming Middle School during FY 2007, and, for that reason, recovery was warranted. USAC’s decision failed to address the “elephant in the room,” however, which was that CBE did not have to prove that it provided service there that year, as it was entitled to those funds, whether the equipment at Welcoming Middle School needed repair...or not.

II. DISCUSSION

A. In FY 2007, contracts like the one in issue here that required an upfront, fixed-price payment for basic maintenance were eligible for E-rate support, even if no basic maintenance services were ever performed. Such contracts did not become ineligible until FY 2011.

The Commission did not even begin to limit funding for fixed price, retainer-type maintenance contracts, like CBE’s contract with the School District, until FY 2010, when it ruled that so-called “unbundled warranties” would not be eligible for E-rate support.¹⁵ But what prompted that decision, unlike the one that was to follow for FY 2011, was not the Commission’s concern over fixed price, retainer-type contracts per se, but rather, the possibility that the coverage that those kinds of contracts and “unbundled warranties” provided might overlap. Many E-rate stakeholders were concerned, and rightly so, that Cisco SmartNet contracts and other fixed-fee contracts like them would no longer be eligible as a result of the Commission’s decision, but that, USAC assured everyone in one of its Newsbriefs, was not the case.¹⁶

On December 2, 2009, the FCC released a Report and Order which made findings about the particular changes to the Eligible Services List (ESL) recommended by

¹⁴ See Exhibit 1 and the copy of the Disbursement Recovery Report included in this section.

¹⁵ See *Report and Order and Further Notice of Proposed Rulemaking -- The 2010 ESL Public Notice and ESL NPRM* at para. 28 (2009).

¹⁶ See *Schools and Libraries Newsbrief - Unbundled Warranties Update* (January 29, 2010) <http://usac.org/sl/tools/news-briefs/preview.aspx?id=279>

USAC (FCC 09-105). Among other things, the FCC decided that unbundled warranties should not be added to the ESL. We know that this finding has caused concern for those applicants that have received E-rate discounts on Cisco's SMARTnet technical support service and other similar contracts (for the purposes of this news brief, we will call these types of agreements "SMARTnet-type contracts") in the past and those applicants that have planned to seek discounts for these contracts for Funding Year 2010. After consulting with the Federal Communication Commission's Wireline Competition Bureau (FCC), we are able to provide additional guidance on this matter.

* * *

Like other types of service contracts, SMARTnet-type contracts can qualify for E-rate funding under the basic maintenance definition, even after the most recent Commission order. However, if an applicant seeks discounts for a SMARTnet-type contract along with other technical support contracts, as potentially SMARTnet-type contract might not cover all of an applicant's basic maintenance requirements, there should be no overlap between the contracts... [Emphasis added].

It was not until the following year, after the Commission had the opportunity to consider the matter further in its *Sixth Report and Order*, that the Commission decided finally to put an end to funding fixed-price, retainer-type repair contracts because of the potential for waste that the Commission found inherent in them:¹⁷

We find that an unbundled warranty is an ineligible BMIC service because it is purchased as a type of retainer and not as an actual maintenance service. That is, BMIC contracts that require an upfront payment and that payment is required regardless of whether any service is actually performed are not eligible. In light of the limited funds available for the program, we decline to include support for service that may not need to be performed. [Emphasis added].

That decision triggered a firestorm of questions and concerns. To address them, the Commission decided to issue a clarifying *Order*. At the very beginning of it, the Commission made two things perfectly clear: (1) its decision to no longer support fixed-fee, retainer-type maintenance contracts was designed to reduce the inefficient use of E-rate funds; and (2) those kinds of maintenance contracts would be “ineligible for funding beginning in funding year 2011.”¹⁸ Going forward, the Commission explained, E-rate

¹⁷ See *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, *Sixth Report and Order*, CC Docket 02-6, at paras. 106-107 (2010)

¹⁸ See *Schools and Libraries Universal Service Support Mechanism, Order*, CC Docket 02-6, at para. 2 (2010) (“*Clarification Order*”).

funds could not be used to fund, in advance, contracts for maintenance work that may or may not be needed; E-rate discounts would be available only for “actual work performed or for hours of labor actually used.”¹⁹

In issue here is a FY 2007 funding commitment. As the foregoing discussion shows, it is incontrovertible that in FY 2007 contracts for basic maintenance that required a fixed, upfront payment, like the parties’ contract here, were eligible for E-rate support - even if no services were ever performed. Such contracts did not even start to become ineligible until FY 2010.

Therefore, CBE’s inability to show UAC tickets or logs to document that it provided basic maintenance service during FY 2007 at Welcoming Middle School or that Cisco provided SmartNet service there is irrelevant. Even if that middle school’s covered equipment needed no service all year long, which was not actually the case and highly unlikely in any event, the contract still would have been eligible that year for E-rate support. Therefore, when USAC’s concluded that it should not have paid CBE’s FY 2007 invoice for the basic maintenance services that the company said it had provided to Welcoming Middle School, because CBE could not document that it provided those services, it was clearly mistaken. Accordingly, we respectfully request that USAC reverse its decision and terminate the repayment process in FRN 1616378.

B. Even assuming, for argument’s sake, that the repair part of the parties’ contract was ineligible, the entire technical and software support side of it still would have been eligible.

In its *Clarification Order*, the Commission clarified that “standard fixed-priced offerings that provide only software downloads, security patches, bug fixes, and access to online and/or telephone-based technical assistance and tools are not unbundled warranties if they are required to support the functionality of the internal connection”²⁰ For those kinds of services, the Commission explained, the *Sixth Report and Order* did not change anything. In other words, it would instruct USAC to continue paying one-time charges at any time of the year for those kinds of maintenance services and not to require any

¹⁹ *Id.* at para. 4.

²⁰ *Id.* at n.13.

documentation to show that the service provider had provided those kinds of services.²¹ Therefore, at a minimum, USAC properly paid CBE for the part of its invoice that was for technical and software support services.

C. The recovery of funds is also unwarranted because CBE had legitimate, business-related reasons for not being able to produce site-specific maintenance records for Welcoming Middle School.

When USAC asked CBE to document the site-specific maintenance services that it had provided at Welcoming Middle School during FY 2007, the company ran into difficulty for a wide variety of business-related reasons. First, the company switched ownership and accounting systems during that time period, which made finding any kind of historic data from that earlier period extremely difficult in some cases and in others, like this one, impossible. Second, because of the nature of fixed-priced contracts, the company had engineers onsite at the School District on a regular basis for both preventative maintenance and repair work, so staff did not record every visit or part replaced. No doubt the better business practice would have been to do so, and today, CBE requires everyone on its technical staff to do exactly that. Finally, Cisco SmartNet comprised a large part of the parties' contract and, typically, it would have been the end user, the School District, that would have been the party contacting Cisco to initiate a maintenance ticket. Because of that, CBE was not in a position to keep track of SmartNet calls.

Despite the lack of site-specific documentation, there is no evidence or any reason even to suspect that CBE did not provide maintenance services at Welcoming Middle School during FY2007. In light of that and since anyone certified to repair network electronics surely would tell you, from experience, that one or more pieces of covered LAN equipment at that middle school must have required at least some maintenance and/or support that year, CBE's inability to prove it with maintenance tickets or logs should not be enough to support the recovery of funds.

²¹ *Id.* at para. 6.

III. CONCLUSION

USAC assumed that a switch that auditors found in a network closet in April 2009 had never been installed, when it actually was an old switch that the School District had instructed CBE to replace in 2008 as part of an IP Telephony project. The old switch was installed and working in FY 2005 when CBE invoiced USAC for maintenance on it. Therefore, USAC properly paid CBE for that service.

USAC concluded incorrectly that it should not have paid CBE for FY 2007 basic maintenance services at one of the School District's schools because CBE could not produce tickets or logs to prove that it actually had done work there. The parties had a fixed-price, retainer-type contract for district-wide basic maintenance, which included Cisco SmartNet services. Under the Commission's rules in effect for FY 2007, those kinds of agreements were eligible for E-rate support, even if the service provider did not provide any services under it. That did not change until FY 2011. Therefore, CBE was entitled to the full, upfront fee for FY 2007 basic maintenance that the parties had agreed upon, regardless of whether it had been necessary for CBE to provide service at the school in question, and thus the documentation that USAC insisted upon seeing was irrelevant.

Respectfully submitted on behalf of
CBE Technologies, LLC,

/s/ Cathy Cruzan

Cathy Cruzan
President
Funds For Learning, LLC
501 South Coltrane Road (Suite 100)
Edmond, OK 73034
ccruzan@fundsforlearning.com
405- 471-0965

Orin Heend
Counsel
Funds For Learning, LLC
oheend@fundsforlearning.com

cc: Jennifer Brickhill
Sales Administration & E-rate Manager
CBE Technologies, LLC
Jennifer.Brickhill@cbetech.com

EXHIBIT 3

EXHIBIT 1



Schools & Libraries Division

Notification of Improperly Disbursed Funds Recovery Letter

Funding Year 2005: July 1, 2005 - June 30, 2006

February 25, 2011

Jennifer Brickhill
CBE Technologies, Inc.
215 North Brow Street
East Providence, RI 02914

Re: SPIN: 143011377
Form 471 Application Number: 456578
Funding Year: 2005
FCC Registration Number:
Applicant Name: LYNN SCHOOL DISTRICT
Billed Entity Number: 120415
Applicant Contact Person: Thomas J. Bourque

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were disbursed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by Program rules, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the Program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC.' For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

Schools and Libraries Division - Correspondence Unit
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981
Visit us online at: www.usac.org/sl

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Notification of Improperly Disbursed Funds decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Improperly Disbursed Funds Recovery Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Funding Disbursement Recovery Report included with this letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.
To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING DISBURSEMENT RECOVERY REPORT

On the pages following this letter, we have provided a Funding Disbursement Recovery Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from the application for which recovery is necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on these FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action. The Report explains the exact amount the service provider is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Thomas J. Bourque
LYNN SCHOOL DISTRICT

Funding Disbursement Recovery Report
for Form 471 Application Number: 456578

Funding Request Number:	1323754
Contract Number:	ITC16
Services Ordered:	INTERNAL CONNECTIONS MNT
Billing Account Number:	
Funding Commitment:	\$22,400.00
Funds Disbursed to Date:	\$22,400.00
Funds to be Recovered from Service Provider:	\$182.21

Disbursed Funds Recovery Explanation:

Finding 4

During an audit it was determined that funds were improperly disbursed on this funding request for products and/or services that were not delivered. The pre-discount cost allocation for maintenance charges for Cisco Catalyst 2950 (Basic Maintenance) Switch which was not installed was provided by the service provider. The pre-discount allocation is \$18.98/month. ($18.98 \times 12 = \227.76 annual pre-discount amount) Based on the applicants discount of 80 percentage the recovery amount is \$182.21. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities. These rules are violated if the service provider receives payment for services and/or products that it did not deliver to the eligible entity. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it only receives support for services and/or products that it actually provides to its customers. Accordingly, USAC will seek recovery of the \$182.21 of improperly disbursed funds from the service provider.



Schools & Libraries Division

Notification of Improperly Disbursed Funds Recovery Letter

Funding Year 2007: July 1, 2007 - June 30, 2008

March 2, 2011

Jennifer Brickhill
CBE Technologies, Inc.
215 North Brow Street
East Providence, RI 02914

Re: SPIN: 143011377
Form 471 Application Number: 582501
Funding Year: 2007
FCC Registration Number:
Applicant Name: LYNN SCHOOL DISTRICT
Billed Entity Number: 120415
Applicant Contact Person: Thomas J. Bourque

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were disbursed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by Program rules, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the Program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

Schools and Libraries Division - Correspondence Unit
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Visit us online at: www.usac.org/sl

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2. State outright that your letter is an appeal. Identify the date of the Notification of Improperly Disbursed Funds Recovery Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
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 - FCC Registration Number (FCC RN) from the top of your letter.
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4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
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Schools and Libraries Division
Universal Services Administrative Company

cc: Thomas J. Bourque
LYNN SCHOOL DISTRICT

Funding Disbursement Recovery Report
for Form 471 Application Number: 582501

Funding Request Number: 1616378
Contract Number: ITC16
Services Ordered: INTERNAL CONNECTIONS MNT
Billing Account Number:
Funding Commitment: \$17,712.00
Funds Disbursed to Date: \$17,712.00
Funds to be Recovered from Service Provider: \$17,712.00

Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that funds were disbursed for products and/or services that were not delivered. Proper documentation (such as copies of maintenance logs and trouble tickets) to indicate eligible maintenance was performed on eligible equipment at the Welcoming Middle School was not provided by the service provider. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities. These rules are violated if the service provider receives payment for services and/or products that it did not deliver to the eligible entity. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it only receives support for services and/or products that it actually provides to its customers. Accordingly, USAC will seek recovery of the \$17,712.00 of improperly disbursed funds from the service provider.

EXHIBIT 2

EF-304.4

Condition:

The Beneficiary did not install products funded by the Schools & Libraries program more than one year after receipt.

Internal Connections FRNs:

- In Funding Year 2007, the Beneficiary received S&L funding for FRN 1614789 to purchase a Cisco 3560G 48 Port switch for Ford Elementary School that was received on February 1, 2008 which had not been installed as of April 3, 2009.
- In Funding Year 2007, the Beneficiary received S&L funding for FRN 1614427 to purchase a Cisco 3560G 48 Port switch and a APC Smart UPS 1500 for Hood Elementary School that was received on February 1, 2008 which had not been installed as of April 3, 2009.

Internal Connections/Basic Maintenance FRNs:

- During our site visits at LVTI MW, relative to FRN# 1323754, we noted that a Cisco Catalyst 2950 switch was uninstalled and not in use.

The uninstalled items were not being utilized for educational purposes.

Issue: E-Rate Products and Services – Equipment Not Used

There was a significant delay between the installation of IP-Telephony equipment by the vendor and Wireless Network equipment by the same vendor, but after some building wiring had been done. The equipment in question was intended to be installed when the wireless equipment was finished, but because of an oversight, it was not. As soon as we discovered that the equipment was not installed, we had the vendor install and configure it, and it is all set up now. The invoice date for the equipment in question is February 28, 2008, and the invoice date for the installation is 5/27/08. We have heard that generally 1 year is considered to be a reasonable timeframe for equipment to be installed, and we feel that between May 27, 2008 and April 3, 2009 is within that period.

This occurred at both the Hood School and the Ford School.

The Catalyst 2950 at LVTI MW was not purchased from FRN 1323754, it was an existing piece of equipment that was in service at the time of the FRN 1323754 Basic Maintenance contract but has since been replaced by new equipment, but was kept in the MDF to keep our inventory of E-Rate equipment in place. The 2950 is a non-Power-Over-Ethernet switch that was replaced in August 2008 by a Catalyst 3560 POE Cisco switch (CBE Invoice S_INV5001568). I described this to the KPMG auditor during the site visits. The Basic Maintenance FRN 1323754 in question was for funding year 2005. Your site visit was in April 2009.

EXHIBIT 3



Schools and Libraries Division

January 14, 2011

CBE technologies – Jennifer Brickhill

RE- Lynn School District

471 Application Number:

FRN: 1323754

Response Due Date: January 29, 2011

Time Sensitive – 15-Day Response Expected

As previously discussed, we are currently in the process of reviewing all Funding Year 2005 form 471 applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. To complete my review I need some additional information. The information needed to complete the review is listed below.

During an audit conducted Form 471 Application # 456578, you provided information that led to the COMAD referral. Based on a review of the documentation provided, we have determined that USAC may have improperly disbursed funds for FRN : 1323754, because equipment was not utilized in accordance with program rules the allocation amount will be recovered from the service provider.

FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose.

In order to continue the review of FRN please provide a cost allocation for maintenance for Cisco 2950.

Finding 4

FRN 1323754 – Cisco Catalyst 2950 (Basic Maintenance) Switch was not installed at the time of the audit. Please provide monthly pre-discount cost allocation Maintenance.

Cost allocation will be recovered from the service provider.

Please fax or email the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested within 15 calendar days so we can complete our review. Failure to do so may result in a commitment adjustment and/or recovery of previously disbursed funds.

Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-
0685

Visit us online at: www.usac.org/sl

Please advise me if the Contact Person on the application(s) has changed from that on the original application. This change must include the Form 471 application number(s) and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

Thank you for your cooperation and continued support of the Universal Service Program.

Karen Hulmes
School and Libraries Division
Program Compliance
Voice 973 581-5116
Fax 973 599-6582
Email address khulmes@sl.universalservice.org

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-
0685
Visit us online at: www.usac.org/sl

EXHIBIT 4



CBE Technologies, Inc.
50 Foden Rd.
S. Portland, Maine 04106
United States
<http://www.cbetech.com>

Invoice

Date

August 18, 2008

Doc

S_INV5001568

Description

Lynn PS YR-10 e-Rate Lynn Voc LVTI
Annex Cisco VoIP

SalesRep

Mann, Jeff (P) 207-239-3013

Customer Contact

McManus, Dan
(P) (781) 593-1680
mcmansud@lynnnschools.org

Customer

Lynn Public Schools Erate (60726)
10 City Square Attn Dennis Jung
ATTN DENNIS JUNG
Charlestown, Massachusetts 02129

Bill To

Lynn Public Schools Erate
Payable, Accounts
10 City Square Attn Dennis Jung
Charlestown, Massachusetts 02129

Ship To

Lynn Public Schools Erate
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Customer PO: 00005629-00	Terms: 30 Days	Ship Via: Best Way
------------------------------------	--------------------------	------------------------------

Special Instructions:

None

Carrier Account #:

None

Item	Description	Part #	Qty	Tax	Unit Price	Total
1	<u>Cisco Catalyst 3750G-48PS SMI</u> Switch - 48 ports - EN, Fast EN, Gigabit EN - 10Base-T, 100Base-TX, 1000Base-T + 4 x SFP (empty) - 1U - rack-mountable - stackable	WS-C3750G-48PS-S	2	No	\$10,071.75	\$20,143.50
2	<u>Cisco StackWise stacking cable</u> Stacking cable - 3.3 ft	CAB-STACK-1M=	1	No	\$65.00	\$65.00
3	<u>Cisco transceiver module</u> Transceiver module - SFP - Gigabit EN - 1000Base-SX - 850 nm	GLC-SX-MM=	8	No	\$325.00	\$2,600.00
4	<u>Cisco transceiver module</u> Transceiver module - SFP - Gigabit EN - 1000Base-T	GLC-T=	20	No	\$256.75	\$5,135.00
5	<u>Cisco Catalyst 3560G-48PS SMI</u> Switch - 48 ports - EN, Fast EN, Gigabit EN - 10Base-T, 100Base-TX, 1000Base-T + 4 x SFP (empty) - 1U	WS-C3560G-48PS-S	10	No	\$6,171.75	\$61,717.50
6	<u>Cisco Wireless LAN Controller 4402</u> Network management device - 2 ports - Gigabit EN - 1U - rack-mountable	AIR-WLC4402-50-K9	1	No	\$12,996.75	\$12,996.75
7	<u>Cisco transceiver module</u> Transceiver module - SFP - Gigabit EN - 1000Base-T	GLC-T=	4	No	\$256.75	\$1,027.00
8	<u>Cisco Aironet 1242AG</u> Wireless access point - 802.11b, 802.11a, 802.11g	AIR-LAP1242AG-A-K9	49	No	\$584.35	\$28,633.15
9	<u>Cisco serial cable</u> Serial cable - RJ-45 (M)	AIR-CONCAB1200=	1	No	\$6.50	\$6.50
10	<u>Cisco Aironet Articulated Dipole Antenna</u> Network adapter antenna - 3.5 dBi - omni-directional	AIR-ANT5135D-R	98	No	\$12.35	\$1,210.30
11	<u>Cisco Aironet antenna</u> Antenna - 2 dBi - omni-directional	AIR-ANT4941	98	No	\$12.35	\$1,210.30
15	<u>Cisco Emergency Responder (v. 1.x)</u> (v. 1.x) - license - 1000 phones	KEY-CER1.X-1K=	1	No	\$6,500.00	\$6,500.00
16	<u>APC Smart-UPS RM 1500VA USB & Serial</u> UPS (rack-mountable) - AC 120 V - 980 Watt - 1440 VA - 6 output connector(s) - 2U	SUA1500RM2U	3	No	\$650.00	\$1,950.00
17	<u>Cables to Go patch cable</u> Patch cable - RJ-45 (M) - RJ-45 (M) - 5 ft - stranded wire - (CAT 5e) - blue	22679	680	No	\$2.05	\$1,394.00
18	<u>Cables to Go patch cable</u> Patch cable - LC multi-mode (M) - LC multi-mode (M) - 10 ft -	33047	4	No	\$50.00	\$200.00

fiber optic - 50 / 125 micron - aqua

Subtotal: \$144,789.00
Ineligible: \$0
Eligible: \$144,789.00

SLD Payment \$130,310.10

**Lynn Payment
from Check #267808 \$14,478.90**

Thank you for your order. We value your business and will continue to provide you excellent service in addition to our comprehensive product line.

**Please remit payment to:
PO Box 674065
Detroit, MI 48267**

Notice:

No return or exchange without authorization and original invoice. Consumable, opened software and special orders are not returnable. Defectives are exchanged with the same if returned within 7 days of purchase.

All returns have to be in their own original boxes and packing materials. All warranties are through their respective manufacturers.

Past due invoices will be subject to a 1.5% monthly service charge (18% Annual Percentage Rate).



CBE Technologies, Inc.
50 Foden Rd.
S. Portland, Maine 04106
United States
<http://www.cbetech.com>

Invoice

Date September 30, 2008	Doc # P-0002182
-----------------------------------	---------------------------

Description Lynn PS YR-10 e-Rate LVTI Cisco VoIP
--

SalesRep Mann, Jeff (P) 207-239-3013
--

Customer Contact McManus, Dan (P) (781) 593-1680 mcmanusd@lynnschools.org

Customer

Lynn Public Schools Erate (60726)
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Bill To

Lynn Public Schools Erate
Payable, Accounts
90 Commercial St
Lynn, Massachusetts 01905

Ship To

Lynn Public Schools Erate
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Customer PO: 00003503-00	Terms: Net 30 Days	Ship Via: Best Way
Special Instructions: None	Carrier Account #: None	

Item	Description	Part #	Qty	Tax	Unit Price	Total
	<u>LVTI Project Labor</u>					
	Lynn Voc Wireless Installation \$14,800					
	Lynn Voc IPT Installation: \$29,600					
1	Ineligible (portion associated with 2821 router install): \$540.00	CBE-LAB	1	No	\$88,800.00	\$88,800.00
	Lynn Voc Annex Wireless Installation \$14,800					
	Lynn Voc Annex IPT Installation: \$29,600					

Subtotal	\$88,800.00
Eligible Amt.	\$88,260.00
Ineligible Amt.	\$540.00

SLD Amt Due	\$79,434.00
-------------	-------------

**Lynn Payment
from Check #267808 \$9,366.00**

Thank you for your order. We value your business and will continue to provide you excellent service in addition to our comprehensive product line.

Please remit payment to:
PO Box 414023
Boston, MA 02241

Notice:

No return or exchange without authorization and original invoice. Consumable, opened software and special orders are not returnable. Defectives are exchanged with the same if returned within 7 days of purchase. All returns have to be in their own original boxes and packing materials. All warranties are through their respective manufacturers.
Past due invoices will be subject to a 1.5% monthly service charge (18% Annual Percentage Rate).

EXHIBIT 5



Schools and Libraries Division

September 29, 2010

Tom Bourque

Lynn School District

471 Application Number: 582501, 582501, 456578

FRNS: 1614789, 1614427, 1323754

Response Due Date: October 1, 2010

You were recently sent a request by the Program Compliance team to review your **Funding Year 2006-2007, 471 applications #582501, 582501, 456578, FRNS 1614789, 1614427, 1323754** to ensure that it is in compliance with the rules of the Universal Service program. This is a reminder that your response due date is approaching. We have not received a response to our initial contact with you.

The information still needed to complete the review is listed below. Answer all of the following questions and provide the requested documentation as indicated. Fax or e-mail the requested information to my attention.

Please send the requested information by the response due date **10/01/2010**.

During an audit conducted Form 471 Application #582501, 456578, you provided information that led to the COMAD referral. Based on a review of the documentation provided, we have determined that USAC may have improperly disbursed funds for FRNS 1614789, 1614427, because equipment was not utilized in accordance with program rules. **As a result, USAC may seek recovery of \$11,695.00 disbursed from the applicant.**

FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose.

In order to continue the review of FRN 1614789, 1614427, 1323754 please answer the following questions and sign the certification below:

Finding 4

FRN 1614789 - Cisco 3560g 48 port switch for Ford Elementary.

FRN 1614427- Cisco 3560g 48 port switch and APC Smart UPS 1500 for Hood Elementary.

FRN 1323754 - Cisco Catalyst 2950 (Basic Maintenance) Switch was not installed at the time of the audit.

Recovery to be Determined.

Please explain the reason for the delay in using the equipment.

LYNN PUBLIC SCHOOLS

Administrative Offices – 90 Commercial Street, Lynn, MA 01905
Tel. (781) 593-1680 ~ Fax. (781) 477-7487



September 29, 2010

Lynn School District
471 Application Number:
FRN: 1614789 and 1614427
Finding 4

Ms. Humes:

FRN 1614789 and FRN 1614427 – The Ford School, Attachment 8, and Hood School, Attachment 9, were installed in two phases, the network and IP Telephony first, then the contractor installed the Wireless systems. The wireless installation was delayed because it required extensive re-wiring of the buildings. Before the wireless access points were installed, the contractor set aside the equipment listed, to be set up when the new Access Points were connected. When the wireless was finally finished, the contractor used different personnel who did not realize that equipment had been set aside, and connected the wireless equipment to switches that were already installed. They did not notice that some equipment was not installed.

As soon as we realized the error, we contacted the vendor and the equipment was put into service, and we notified the auditors that the situation had been corrected. The wireless installation was substantially completed on 5/27/08

If there are any further questions please feel free to contact this office.

Regards,

A handwritten signature in black ink, appearing to read "Thomas Bourque", is written over a horizontal line.

Thomas Bourque
Assistant to the Business Administrator



CBE Technologies, Inc.
50 Foden Rd.
S. Portland, Maine 04106
United States
<http://www.cbetech.com>

Invoice

Date May 27, 2008	Doc # PJ_OA100050024-5
-----------------------------	----------------------------------

Description Lynn PS YR-10 e-Rate Ford Cisco VoIP
--

SalesRep Mann, Jeff (P) 207-239-3013
--

Customer Contact McManus, Dan (P) (781) 593-1680 mcmanusd@lynnschools.org

Customer
Lynn Public Schools Erate (60726)
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Bill To
Lynn Public Schools Erate
Payable, Accounts
90 Commercial St
Lynn, Massachusetts 01905

Ship To
Lynn Public Schools Erate
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Customer PO: 00003503-00	Terms: Net 30 Days	Ship Via: Best Way
Special Instructions: None	Carrier Account #: None	

Item	Description	Part #	Qty	Tax	Unit Price	Total
1	Ford Project Labor Eligible \$43,944.00 Ineligible (portion associated with 2821 router install - qty 2): \$228.00 each (\$456 total)	CBE-LAB	1	No	\$44,400.00	\$44,400.00

Subtotal	\$44,400.00
Eligible Amt.	\$43,944.00
Ineligible Amt.	\$456.00

SLD Amt Due	\$39,549.60
-------------	-------------

Lynn Total Due	\$4,850.40
-----------------------	-------------------

Thank you for your order. We value your business and will continue to provide you excellent service in addition to our comprehensive product line.

Please remit payment to:
PO Box 414023
Boston, MA 02241

Notice:
No return or exchange without authorization and original invoice. Consumable, opened software and special orders are not returnable. Defectives are exchanged with the same if returned within 7 days of purchase. All returns have to be in their own original boxes and packing materials. All warranties are through their respective manufacturers.
Past due invoices will be subject to a 1.5% monthly service charge (18% Annual Percentage Rate).

4068

Attachment: 9

~~Hood~~
Hood

7

CBE technologies

CBE Technologies, Inc.
50 Foden Rd.
S. Portland, Maine 04106
United States
<http://www.cbetech.com>

Invoice

Date May 27, 2008	Doc # PJ_OA100050027
-----------------------------	--------------------------------

Description Lynn PS YR-10 e-Rate Hood Cisco VoIP
--

SalesRep Mann, Jeff (P) 207-239-3013
--

Customer Contact McManus, Dan (P) (781) 593-1680 mcmansd@lynnschools.org

Customer
Lynn Public Schools Erate (60726)
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Bill To
Lynn Public Schools Erate
Payable, Accounts
90 Commercial St
Lynn, Massachusetts 01905

Ship To
Lynn Public Schools Erate
McManus, Dan
90 Commercial St
Lynn, Massachusetts 01905

Customer PO: 00003503-00

Terms: Net 30 Days

Ship Via: Best Way

Special Instructions: None

Carrier Account #: None

Item	Description	Part #	Qty	Tax	Unit Price	Total
1	Hood Project Labor Eligible \$22,172.00 Ineligible (portion associated with 2821 router install): \$228.00	CBE-LAB	1	No	\$22,200.00	\$22,200.00

Subtotal \$22,200.00

Eligible Amt. \$22,172.00

Ineligible Amt. \$228.00

SLD Amt Due \$19,774.80

Lynn Total Due \$2,425.20

Thank you for your order. We value your business and will continue to provide you excellent service in addition to our comprehensive product line.

Please remit payment to:
PO Box 414023
Boston, MA 02241

Notice:

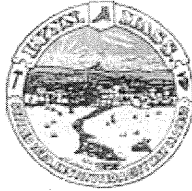
No return or exchange without authorization and original invoice. Consumable, opened software and special orders are not returnable. Defectives are exchanged with the same if returned within 7 days of purchase. All returns have to be in their own original boxes and packing materials. All warranties are through their respective manufacturers.

Past due invoices will be subject to a 1.5% monthly service charge (18% Annual Percentage Rate).

5067

LYNN PUBLIC SCHOOLS

Administrative Offices – 90 Commercial Street, Lynn, MA 01905
Tel. (781) 593-1680 ~ Fax. (781) 477-7487



September 29, 2010

Lynn School District
471 Application Number:
FRN: 1323754
Finding 4

Ms. Humes:

FRN1323754 is in reference to Basic Maintenance on a Cisco Switch from 3 years previous. The switch in question was installed and functioning at the time of the service delivery, but had since been replaced by an updated switch when the building was upgraded to an IP-Telephone system.

In order to keep our inventory as accurate as possible, when the Cisco 2950 switch was removed from service, we kept it in the same location until I could find another site to locate the switch at. The audit was conducted at a time beyond the FRN service delivery period. The switch had been used and maintained.

If there are any further questions please feel free to contact this office.

Regards,

A handwritten signature in black ink, appearing to read "Thomas Bourque".

Thomas Bourque
Assistant to the Business Administrator

1) Please provide the date in month/year format when the equipment was first delivered: 2/2008
 * The approvals had been delayed so equipment only came at this point.

2) Has the equipment been utilized? Yes X No _____

If Yes, please provide:

- a) The date(s) in month/year format when the equipment was utilized MAY 27, 2008
- b) Documentation demonstrating that the equipment was utilized (e.g. maintenance records, trouble tickets, equipment logs, etc.)
- c) If the equipment was utilized at different times, provide the type and/or quantity of equipment utilized by each date and documentation showing utilization for each (e.g. maintenance records, trouble tickets, equipment logs, etc.)

If No, do you intend to utilize the equipment? Yes _____ No _____

If Yes, please provide the date(s) in month/year format when you intend to utilize the equipment

I certify that I am authorized to make the representations set forth in the responses to the Recovery of Erroneously Disbursed Funds inquiry on behalf of (NAME OF ENTITY), the entity represented on and responding to the Recovery of Erroneously Disbursed Funds inquiry, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the Recovery of Erroneously Disbursed Funds inquiry are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 29 day of September, 2010 at LYNN [city], MA [state].

Signature <u>Thomas J. Bourquet</u>		Date <u>9/29/2010</u>
Print Name <u>Thomas J. Bourquet</u>	Title <u>Asst. to Bus. Admin</u>	
Employer <u>Lynn School District</u>		
Telephone Number <u>617-799-7954</u>	Fax Number <u>781-477-7487</u>	
Email Address <u>bourquet@LynnSchools.org</u>		
Address <u>90 Commercial St.</u> <u>LYNN, MA 01905</u>		

TRANSMISSION VERIFICATION REPORT

TIME : 09/30/2010 09:18
NAME : SUPT OFFICE
FAX : 17814777487
TEL : 17815931680
SER.# : 000L5J277850

DATE, TIME
FAX NO. /NAME
DURATION
PAGE(S)
RESULT
MODE

09/30 09:16
15735996582
00:02:11
07
OK
STANDARD
ECM

LYNN PUBLIC SCHOOLS
Administrative Offices
90 Commercial Street
Lynn, Massachusetts 01905

Phone: (781) 593-1680
Fax: (781) 477-7487

Date: 9/30/10

FAX COVER SHEET

TO:

School/Company: KAREN Humes
Individual: SLD
Fax Number: 973-599-6532

FROM:

Department: Business
Individual: Tom Bourque

Voice Mail Number: (781) 268-4024
cell (617) 799-7954

MESSAGE:

KAREN: Again, thank you for your
interview.

EXHIBIT 6

LYNN PUBLIC SCHOOLS

Administrative Offices – 90 Commercial Street, Lynn, MA 01905
Tel. (781) 593-1680 ~ Fax. (781) 477-7487



September 29, 2010

Lynn School District
471 Application Number:
FRN: 1323754
Finding 4

Ms. Humes:

FRN1323754 is in reference to Basic Maintenance on a Cisco Switch from 3 years previous. The switch in question was installed and functioning at the time of the service delivery, but had since been replaced by an updated switch when the building was upgraded to an IP-Telephone system.

In order to keep our inventory as accurate as possible, when the Cisco 2950 switch was removed from service, we kept it in the same location until I could find another site to locate the switch at. The audit was conducted at a time beyond the FRN service delivery period. The switch had been used and maintained.

If there are any further questions please feel free to contact this office.

Regards,

A handwritten signature in black ink, appearing to read "Thomas Bourque".

Thomas Bourque
Assistant to the Business Administrator

EXHIBIT 7



Schools and Libraries Division

January 14, 2011

CBE technologies – Jennifer Brickhill

RE- Lynn School District

471 Application Number:

FRN: 1323754

Response Due Date: January 29, 2011

Time Sensitive – 15-Day Response Expected

As previously discussed, we are currently in the process of reviewing all Funding Year 2005 form 471 applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. To complete my review I need some additional information. The information needed to complete the review is listed below.

During an audit conducted Form 471 Application # 456578, you provided information that led to the COMAD referral. Based on a review of the documentation provided, we have determined that USAC may have improperly disbursed funds for FRN : 1323754, because equipment was not utilized in accordance with program rules the allocation amount will be recovered from the service provider.

FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose.

In order to continue the review of FRN please provide a cost allocation for maintenance for Cisco 2950.

Finding 4

FRN 1323754 – Cisco Catalyst 2950 (Basic Maintenance) Switch was not installed at the time of the audit. Please provide monthly pre-discount cost allocation Maintenance.

Response: Monthly pre-discount cost allocation for Cisco Catalyst 2950 Switch = \$18.98/month (\$227.76)

Cost allocation will be recovered from the service provider.

Please fax or email the requested information to my attention. If you have any questions, please feel free to contact me.

Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-
0685

Visit us online at: www.usac.org/sl

It is important that we receive all of the information requested within 15 calendar days so we can complete our review. Failure to do so may result in a commitment adjustment and/or recovery of previously disbursed funds.

Please advise me if the Contact Person on the application(s) has changed from that on the original application. This change must include the Form 471 application number(s) and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

Thank you for your cooperation and continued support of the Universal Service Program.

Karen Hulmes
School and Libraries Division
Program Compliance
Voice 973 581-5116
Fax 973 599-6582
Email address khulmes@sl.universalservice.org

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-
0685
Visit us online at: www.usac.org/sl

EXHIBIT 8

Subject: RE: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

Date: Friday, February 11, 2011 6:53:23 PM ET

From: Brickhill, Jennifer

To: ProgCompliance2, khulmes@sl.universalservice.org

CBE would like to follow up on your initial inquiry regarding the cost allocation of basic maintenance services for a Cisco 2950 switch for FRN 1323754 (Lynn Voc Tech Institute). We understand that during the audit of this FRN which was conducted in 2009, the switch was onsite, but uninstalled. However, during the 2005 funding year, the switch was in place and functioning. On January 27, 2011 we responded with the requested cost allocation, however, we do not agree that this switch was not used in accordance with the program rules during FY2005.

Please contact us if you have any questions or need additional information.

Thank you,
Jennifer Brickhill

From: Brickhill, Jennifer
Sent: Thursday, January 27, 2011 10:27 AM
To: 'ProgCompliance2'; 'khulmes@sl.universalservice.org'
Subject: RE: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

Karen,
Thank you for the reminder email. Attached is CBE Technologies' response to your request for cost allocation for maintenance. Please let me know if you have any questions or need additional information.

Thank you,
Jennifer Brickhill
CBE Technologies

From: ProgCompliance2 [mailto:ProgCompliance2@solixinc.com]
Sent: Thursday, January 27, 2011 9:47 AM
To: Brickhill, Jennifer
Cc: Jennifer Brickhill@1-401-330-2844; bozols@doe.mass.edu
Subject: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

Jennifer
In accordance with my telephone message please see the attached reminder letter. The information is due by 1-29-11.

Karen Hulmes
Program Compliance

Confidentiality Notice: The information in this e-mail and any attachments thereto is intended for the named recipient(s) only. This e-mail, including any attachments, may contain information that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action or inaction in reliance on the contents of this e-mail and any of its attachments is **STRICTLY PROHIBITED**. If you have received this e-mail in error, please immediately notify the sender via return e-mail; delete this e-mail and all attachments from your e-mail system and your computer system and

network; and destroy any paper copies you may have in your possession. Thank you for your cooperation.

Subject: RE: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

Date: Friday, February 11, 2011 6:57:53 PM ET

From: Hulmes, Karen

To: Brickhill, Jennifer

Jen,

The review has gone through based on your response you provided.

Karen

From: Brickhill, Jennifer [mailto:Jennifer.Brickhill@cbetech.com]

Sent: Friday, February 11, 2011 5:53 PM

To: ProgCompliance2; Hulmes, Karen

Subject: RE: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

CBE would like to follow up on your initial inquiry regarding the cost allocation of basic maintenance services for a Cisco 2950 switch for FRN 1323754 (Lynn Voc Tech Institute). We understand that during the audit of this FRN which was conducted in 2009, the switch was onsite, but uninstalled. However, during the 2005 funding year, the switch was in place and functioning. On January 27, 2011 we responded with the requested cost allocation, however, we do not agree that this switch was not used in accordance with the program rules during FY2005.

Please contact us if you have any questions or need additional information.

Thank you,
Jennifer Brickhill

Jennifer Brickhill
Sales Administration & Erate Manager
CBE Technologies, LLC.
Office 401-330-2804
Mobile 401-261-4785
Fax 401-330-2844
Tandberg jbrickhill.movi@cbetech.com
MOVI
Jennifer.Brickhill@cbetech.com

CONFIDENTIALITY NOTICE: The contents of this email, all related responses and any files and/or attachments transmitted with it are CONFIDENTIAL and are intended solely for the use of the individual or entity to whom they are addressed (or authorized to receive for the addressee). This email may contain legally privileged information and may not be disclosed or forwarded to anyone else without authorization from the originator of this email. If you have received this email in error, please notify the sender immediately and delete all copies from your system.

From: Brickhill, Jennifer
Sent: Thursday, January 27, 2011 10:27 AM
To: 'ProgCompliance2'; 'khulmes@sl.universalservice.org'
Subject: RE: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

Karen,

Thank you for the reminder email. Attached is CBE Technologies' response to your request for cost allocation for maintenance. Please let me know if you have any questions or need additional information.

Thank you,
Jennifer Brickhill
CBE Technologies

From: ProgCompliance2 [mailto:ProgCompliance2@solixinc.com]
Sent: Thursday, January 27, 2011 9:47 AM
To: Brickhill, Jennifer
Cc: Jennifer Brickhill@1-401-330-2844; bozols@doe.mass.edu
Subject: REMINDER LETTER LYNN SCHOOL DISTRICT FRN 1323754 KH

Jennifer

In accordance with my telephone message please see the attached reminder letter. The information is due by 1-29-11.

Karen Hulmes
Program Compliance

Confidentiality Notice: The information in this e-mail and any attachments thereto is intended for the named recipient(s) only. This e-mail, including any attachments, may contain information that is privileged and confidential and subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action or inaction in reliance on the contents of this e-mail and any of its attachments is **STRICTLY PROHIBITED**. If you have received this e-mail in error, please immediately notify the sender via return e-mail; delete this e-mail and all attachments from your e-mail system and your computer system and network; and destroy any paper copies you may have in your possession. Thank you for your cooperation.

EXHIBIT 9

ITEM 21 ATTACHMENT

Form 471 #: 582501

FRN: 1616378

BEN: 120415

Attachment #: Welcoming B

Location	Equipment to be Covered	Price
Welcoming Middle	(1) Cisco 3750 Switch (2) Cisco 3560 Switches (1) 2851 Router (1) HP ProLiant DL320 – Firewall/VPN/DHCP server All Data Cabling	\$19,995

Services will include:

- Repair and upkeep of eligible hardware
- Wire and cable maintenance
- Basic technical support
- Configuration changes

EXHIBIT 10



Schools and Libraries Division

January 27, 2011

Jennifer Brickhill – CBE Technologies, LLC.

Applicant - Lynn School District

471 Application Number: 582501

FRN: 1616378

Response Due Date: February 12, 2011

Time Sensitive – 15-Day Response Expected

As previously discussed, we are currently in the process of reviewing all Funding Year 2007 form 471 applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. To complete my review I need some additional information. The information needed to complete the review is listed below.

During an audit conducted Form 471 Application #582501, you provided information that led to the COMAD referral. Based on a review of the documentation provided, we have determined that USAC may have improperly disbursed funds for FRN because equipment was not utilized in accordance with program rules. As a result, USAC may seek recovery of \$17,712.00 disbursed from the service provider.

In order to continue the review of FRN 1616378 please provide the following documentation.

Finding 3

Please provide the information requested below to show that maintenance was performed at the Welcoming Middle School during fy 2007.

Item 1

Please provide documentation showing that the maintenance services were delivered to the Welcoming Middle School (school code 01630330) during FY 2007 (e.g. maintenance records, trouble tickets).

Please fax or email the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested within 15 calendar days so we can complete our review. Failure to do so may result in a commitment adjustment and/or recovery of previously disbursed funds.

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-
0685

Visit us online at: www.usac.org/sl

Please advise me if the Contact Person on the application(s) has changed from that on the original application. This change must include the Form 471 application number(s) and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

Thank you for your cooperation and continued support of the Universal Service Program.

Karen Hulmes
School and Libraries Division
Program Compliance
Voice 973 581-5116
Fax 973 599-6582
Email address khulmes@sl.universalservice.org

CC: Jeff Mann CBE Technologies

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-
0685
Visit us online at: www.usac.org/sl

EXHIBIT 11



Schools and Libraries Division

February 7, 2011

Jennider Brickhill

CBE Technologies

RE – Lynn School District

471 Application Number:

FRN # 1616378

Response Due Date: February 12, 2011

You were recently sent a written request for additional information needed by the Program Compliance team to review a recent FCC audit finding related to your Funding Year 2005, Form 471 # 456578, Funding Request Number 1616378. This is a reminder that the response due date is approaching. To date, none of the requested information has been received. The information needed to complete the review is listed below. **This finding may result in a commitment adjustment and/or recovery of previously disbursed funds.**

FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose.

During an audit conducted Form 471 Application #582501, you provided information that led to the COMAD referral. Based on a review of the documentation provided, we have determined that USAC may have improperly disbursed funds for FRN 1616378 because equipment was not utilized in accordance with program rules. As a result, USAC may seek recovery of \$17,712.00 disbursed from the applicant.

In order to continue the review of FRN 1616378 please provide the following documentation.

Finding 3

Please provide the information requested below to show that maintenance was performed at the Welcoming Middle School during fy 2007.

Item 1

Please provide documentation showing that the maintenance services were delivered to the Welcoming Middle School (school code 01630330) during FY 2007 (e.g. maintenance records, trouble tickets).

Please fax or email your confirmation of the above commitment adjustment and/or recovery of improperly disbursed funds as well as any related information to my attention. If you have any questions, please feel free to contact me.

Response: During this time period, CBE provided basic maintenance services under FRN 1616378/Welcoming Middle School, as detailed in our proposal to Lynn Public Schools. The contract price for basic maintenance services for Welcoming Middle School, as with all of the other individual schools entities/FRNs within the Lynn School Department, were based on the coverage timeframe (7/1/2007-6/30/2008) and equipment to be covered. The price was not based on the number of calls to be provided. Services available to Lynn Public Schools included repair and upkeep of eligible hardware, wire and cable maintenance, basic technical support and configuration changes as needed. CBE provided preventative maintenance services as well as needed repairs for this as well as the other sites within the Lynn Public Schools as requested. While we have record of services provided to Lynn, this information does not depict the individual site name.

In addition, CBE purchased Cisco SmartNet coverage for the following Cisco equipment at Welcoming Middle School:

- (1) Cisco 3750 Switch
- (2) Cisco 3560 Switches
- (1) 2851 Router

The services available to Lynn under Cisco Smartnet included software upgrades, patches, hotfixes, access to Cisco technical assistance, and parts replacement.

We do not agree that the equipment was not utilized in accordance with the program rules.

Response is due is 02/12/11 and may this may result in a commitment adjustment and/or recovery of previously disbursed funds.

A copy of this correspondence is being forwarded to your State E-Rate Coordinator for informational purposes only.

Thank you for your cooperation and continued support of the Universal Service Program.

Karen Hulmes
School and Libraries Division
Program Compliance
Voice 973 581-5116
Fax 973 599-6582
Email address khulmes@sl.universalservice.org

EXHIBIT 12

Subject: RE: Reminder letter Lynn School District FRN 1616378 kh

Date: Saturday, February 12, 2011 12:56:12 PM ET

From: Brickhill, Jennifer

To: Hulmes, Karen

Would it be possible for CBE to get an extension?

From: Hulmes, Karen [mailto:KHULMES@sl.universalservice.org]
Sent: Friday, February 11, 2011 5:57 PM
To: Brickhill, Jennifer
Subject: RE: Reminder letter Lynn School District FRN 1616378 kh
Importance: High

Jennifer,

I need to see proof as outlined in the letter trouble tickets, service logs etc.

From: Brickhill, Jennifer [mailto:Jennifer.Brickhill@cbetech.com]
Sent: Friday, February 11, 2011 5:51 PM
To: Hulmes, Karen
Subject: RE: Reminder letter Lynn School District FRN 1616378 kh

Good afternoon,

Attached is CBE's response to your inquiry regarding Lynn Public Schools. Please let us know if you have any question or need additional information.

Sincerely,

Jennifer Brickhill
CBE Technologies

Jennifer Brickhill
Sales Administration & Erate Manager
CBE Technologies, LLC.
Office 401-330-2804
Mobile 401-261-4785
Fax 401-330-2844
Tandberg MOVI jbrickhill.movi@cbetech.com
Jennifer.Brickhill@cbetech.com

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From: Hulmes, Karen [mailto:KHULMES@sl.universalservice.org]
Sent: Monday, February 07, 2011 4:23 PM
To: Brickhill, Jennifer
Cc: BOzols@doe.mass.edu
Subject: Reminder letter Lynn School District FRN 1616378 kh
Importance: High

Jennifer,
Please see attached reminder letter. The due date is 2-12-2011.

Karen Hulmes
School and Libraries Division
Program Compliance
Voice 973 581-5116
Fax 973 599-6582
Email address
khulmes@sl.universalservice.org

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EXHIBIT 13



T 1-800-YES-TECH ♦ F 617.265.2854 ♦ W www.cbetech.com

DATE: April 15, 2011

TO: Funds For Learning, LLC
Edmond, OK

FROM: CBE Technologies, LLC
215 North Brow Street
East Providence, RI 02914

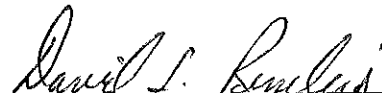
RE: Scope of E-rate-related Authority
Funding Request Numbers: 1323754 and 1616378

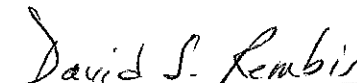
CBE Technologies, LLC (CBE) hereby authorizes Funds for Learning, LLC (FFL) to prepare an appeal of the two Improperly Disbursed Funds decisions that the Universal Service Company (USAC) issued to CBE in connection with the above-referenced funding requests and, after we have reviewed and approved the appeal, to file it electronically with USAC.

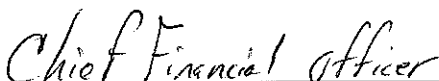
In addition, for purposes of communicating with USAC and, if necessary, the Federal Communications Commission in connection with the appeal and any other matter related to the funding requests referenced above, CBE authorizes FFL to act as our agent and on our behalf.

This grant of agency will expire on March 30, 2011, unless terminated earlier or extended, in writing.

The undersigned person has the authority to grant this agency authority to FFL.


(Signature)


(Print Name)


Title

Corporate
215 N Brow Street
East Providence, RI 02914

Administrative Offices
200 Bulfinch Drive
Andover, MA 01810

Connecticut
50 Nye Road
Glastonbury, CT 06033

Maine
50 Foden Road
South Portland, ME 04106

EXHIBIT 4



Schools and Libraries Division

May 10, 2011

Cathy Cruzan
LYNN SCHOOL DISTRICT

Telephone: (781) 5931680
Application Number 456578

Response Due Date: 5/26/2011

You were recently sent a written request for additional information needed by the Program Compliance Team to review your Funding Year 2005 Form 471 application for appeal to ensure that it is in compliance with the rules of the Universal Service program. This is a reminder that the response due date is approaching. To date, none of the requested information has been received. The information needed to complete the review is listed below.

Please provide Maintenance records/logs and trouble tickets documenting that the maintenance services were provided on the Cisco Catalyst Switch 2950 in the period 7/1/2005-6/30/2006.

It is important that we receive all of the information requested so the Team can complete its review. Please fax or email the requested information to my attention. If you have any questions, do not understand what we are requesting, or feel that you have already responded, please feel free to contact me.

If we do not receive the requested information by 5/26/2011, your application(s) will be reviewed using the information currently on file. Failure to respond may result in a reduction or denial of funding.

Should you wish to cancel your Form 471 application, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s); along with the Form 471 application number(s) and/or funding request number(s), and the complete name, title and signature of the authorized individual.

A copy of this correspondence is being forwarded to your State E-Rate Coordinator for informational purposes only.

Thank you for your cooperation and continued support of the Universal Service Program.

Ashish Sitapara
Associate Manager
Program Compliance
Phone: 973-581-5310
Fax: 973-599-6525
Email: asitapara@sl.universalservice.org

EXHIBIT 5

Subject: Re: ERate App# 456578
Date: Tuesday, May 24, 2011 7:17:53 PM ET
From: Orin Heend <oheend@fundsforlearning.com>
To: Sitapara, Ashish <asitapara@sl.universalservice.org>
CC: Cathy Cruzan <ccruzan@fundsforlearning.com>, Brickhill, Jennifer <Jennifer.Brickhill@cbetech.com>

Ashish,

This is in further response (see my email below dated 5/20) to your request for "maintenance records/logs and trouble tickets documenting that the maintenance services were provided on the Cisco Catalyst Switch 2950 in the period 7/1/2005-6/30/2006. "

Perhaps it would be better if we discussed this over the phone. I fear that we're going around in circles and, because of that, the dispositive issue is not getting the attention it deserves -- i.e., CBE is entitled to E-rate funding for maintenance even if the switch needed no maintenance — thus making the issue of maintenance documentation irrelevant.

I appreciate your effort to clarify the request. Quite frankly though, I thought I understood what you were requesting, but unfortunately, now I'm not so sure I do.

-- Do you want evidence that the switch was operational five to six years ago, during FY2005?

-- Or do you want evidence that the Cisco 2950 switch that we've been focusing on required maintenance during that time period?

If you want evidence that it was operational, we can provide (in addition to the delivery/install evidence already provided) an affidavit to that effect — should we provide one?

If the only thing you're looking for, however, is a log entry or ticket to show that this particular switch received maintenance during FY2005, the answer is, CBE cannot provide you with either. That does not mean, however, that CBE was not entitled to its up-front, fixed fee for promising to maintain this piece of equipment throughout that funding year. As CBE has explained before about maintenance generally and its maintenance contract with the school district more specifically:

- Not every piece of installed equipment needs maintenance every year. So if this switch didn't need any maintenance or support that year, no log, ticket or any other kind of documentation would ever have been generated. That is one reasonable reason why CBE would not be able to document maintenance or support for this switch during that year.
- Here is another. Even if some maintenance or support had been required, it is still possible that no documentation would have been generated. That is because the switch was covered under a fixed price contract for unlimited maintenance, along with all of the school district's other eligible equipment. This is another reasonable reason why CBE would not be able to provide the documentation you are requesting.
- When CBE changed owners, its systems changed too, making it difficult and, in some cases, impossible, to access data now from so many years ago. Nevertheless, CBE staff has spent a great deal of time trying to locate archived information in its systems that might be responsive to your request, but it came up empty-handed. This means one of three things — (1) the information exists, but CBE cannot get at it; (2) this switch required maintenance that year, but the event or events were never recorded electronically; or (3) this switch never required any maintenance.
- For E-rate purposes and thus for purposes of this appeal, it makes no difference which of the three reasons above is correct. That is because the parties had an E-rate eligible, fixed-price agreement for unlimited maintenance. That agreement guaranteed a fixed payment to the vendor in advance, in return for the vendor's promise to provide whatever maintenance and support this switch (and the school district's other covered equipment) might need during the year, no matter how much or how little. It was

an agreement that was designed to be fair to both sides— under the contract, the vendor would benefit economically from equipment that required little or no support, and the school district would benefit economically from equipment that needed a great deal of support.

- In FY2005, this kind of fixed-price contract for unlimited support was unquestionably E-rate eligible. It became ineligible for the first time in FY2011.
- Since payment under this kind of contract is NOT tied to specific incidents of maintenance, and since payment is due whether or not any given piece of covered equipment ever requires repair during the contract period, maintenance logs or tickets are entirely unnecessary to support the vendor's entitlement to payment. Perhaps that seems odd or "not quite right" to you, but that was the rule – until the FCC decided to change it.
- Accordingly, CBE was entitled to the payment it received under FRN 1323754.

Should we set up a time to discuss this?

--Orin

Submitted *on behalf of* CBE Technologies, Inc.

=====

Orin Heend

Funds For Learning, LLC

oheend@fundsforlearning.com

703-434-0220

From: "Sitapara, Ashish" <asitapara@sl.universalservice.org>

Date: Tue, 24 May 2011 15:25:33 -0400

To: <oheend@fundsforlearning.com>

Cc: Cathy Cruzan <ccruzan@fundsforlearning.com>

Subject: RE: ERate App# 456578

Hi ,

For application 456578, FRN 1323754, the appellant claim is that Cisco Catalyst Switch 2950 was in fact installed and used in FY 2005, we requested maintenance records/logs and trouble tickets documenting that the maintenance services were provided on the Cisco Catalyst Switch 2950 in the period 7/1/2005-6/30/2006, therefore please provide any type of documentation showing that the specific piece of equipment was operational and as such needed and received maintenance services requested in FRN 1323754. Hope this clarifies the request. Please respond to the request by May 26,2011.

Thank you.

Ashish Sitapara

Associate Manager

Program Compliance

Phone: 973-581-5310

Fax: 973-599-6525

Email:asitapara@sl.universalservice.org

From: Orin Heend [<mailto:oheend@fundsforlearning.com>]

Sent: Friday, May 20, 2011 6:16 PM

To: Sitapara, Ashish

Cc: Brickhill, Jennifer; Cathy Cruzan

Subject: FW: ERate App# 456578

Mr. Sitapara -

Thank you for the notice. CBE will respond to your information request before the May 26th deadline. In the meantime, there are two things I wanted to bring to your attention.

First, everything that we have explained and discussed before about the CBE— Lynn Public Schools maintenance contract applies to the maintenance of the switch maintenance that you're asking about now. The parties do not have a break-fix maintenance agreement. They have a fixed-price agreement that covers unlimited maintenance or no maintenance. So how much maintenance a switch receives in any given year will depend on how well it operates during that year. If it doesn't break, it doesn't get fixed. If it breaks a lot, it gets fixed a lot. This insurance type of maintenance contract was eligible from FY1998 through FY2010.

Therefore, I honestly don't understand your request for maintenance tickets, logs or other evidence of specific incidents of repair. They are irrelevant - aren't they? If the switch didn't need repair that year, there would have been no need to repair it. Thus, no matter what the repair record might have been for that switch, the school district still owed CBE for maintenance...because the switch was covered under an eligible, maintenance (insurance-type) contract. That seems pretty clear and straightforward — well, it does to me anyway. Does it not to you?

Because CBE was entitled to receive payment, in advance, from USAC and the school district for this type of maintenance contract, CBE does not need to produce logs or any other records to show whether or not there was any specific incidents of maintenance. Therefore, wouldn't it be appropriate to withdraw your documentation request? If not, would you please explain to me how this documentation is relevant to any issue in this appeal? Indeed, at worst, all one can imply from the absence of documentation is that no maintenance was necessary on that switch, which wouldn't make any difference so far as payment is concerned.

Second, CBE has already explained in its Letter of Appeal why it has been so difficult for CBE to produce documentation in connection with maintenance services performed so many years ago. That said and despite CBE's position that this documentation is irrelevant, CBE is still doing its best to mine every old database it can to see if it can locate something that would satisfy your documentation request. We will let you know early next week whether or not its search was successful. In the meantime, I would very much appreciate your responding to my question above as to how the documentation you requested is relevant to the outcome of this appeal?

--Orin Heend

ohend@fundsforlearning.com

703-434-0220

From: Sitapara, Ashish [<mailto:asitapara@sl.universalservice.org>]

Sent: Thursday, May 19, 2011 8:57 AM

To: Cathy Cruzan

Cc: bozols@doe.mass.edu

Subject: ERate App# 456578

Please see the attached.

Ashish Sitapara

Associate Manager

Program Compliance

Phone: 973-581-5310

Fax: 973-599-6525

Email: asitapara@sl.universalservice.org

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